ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE

AND THE BOARD OF GOVERNORS OF THE PATIENTS COMPENSATION FUND

AMENDING AND REPEALING AND RECREATING A RULE

The office of the commissioner of insurance and the board of governors of the patients compensation fund propose an order to amend s. Ins 17.01 (3) (intro.), s. Ins 17.275, s. Ins 17.28 (6a), to repeal and recreate s. Ins 17.28 (6), and to create s. Ins 17.28 (5) (c), relating to annual patients compensation fund and mediation fund fees for the fiscal year beginning July 1, 1999, to affirm open records law and exceptions apply to fund records and to impose a late fee on insurers and self-insurers who are late in filing certificates of insurance.

ANALYSIS PREPARED BY THE OFFICE OF THE COMMISSIONER OF INSURANCE

Statutory authority: ss. 601.41 (3), 655.004, 655.27 (3) (b) and 655.61, Stats.

Statutes interpreted: ss. 655.27 (3) and 655.23 (3) (b) and (c), Stats.

The commissioner of insurance, with the approval of the board of governors (board) of the patients compensation fund (fund), is required to establish by administrative rule the annual fees which participating health care providers must pay to the fund. This rule establishes those fees for the fiscal year beginning July 1, 1999. These fees represent a 7% decrease compared with fees paid for the

1998-99 fiscal year. The board approved these fees at its meeting on March 17, 1999, based on the recommendation of the board's actuarial and underwriting committee.

The board is also required to promulgate by rule the annual fees for the operation of the patients compensation mediation system, based on the recommendation of the director of state courts. This rule implements the director's funding level recommendation by establishing mediation panel fees for the next fiscal year at $16.00 for physicians and $ 1.00 per occupied bed for hospitals, representing no increase from 1998-99 fiscal year mediation panel fees.

This rule provides that open records law and exceptions apply to fund records. This rule imposes a $100 late fee per week per certificate on insurers or self-insured providers who fail to comply with the format and filing date requirements of Ins. 17.28 (5), Wis. Adm. Code. This late fee is intended to reduce the number of late filings and filings not in compliance with the format specified by the commissioner.

SECTION 1. Ins 17.01 (3) (intro.) is amended to read:

Ins 17.01 (3) FEE SCHEDULE. (intro.) The following fee schedule shall be effective July 1, ~~1998~~ 1999:

SECTION 2. Ins 17.275 is amended to read:

Ins 17.275 **Claims information; confidentiality.** (1) PURPOSE. This section interprets ss. 19.35 (1) (a), 19.85 (1) (f), 146.82, 655.26 and 655.27 (4) (b), Stats.

(2) OPEN RECORDS; PRIVILEGED OR CONFIDENTIAL FUND RECORDS. Except as provided in s. 601.427 (7), Stats, records of the fund are subject to subch. II of ch. 19, Stats., and are open to inspection as required under subch. II of ch. 19, Stats. The fund may withhold and retain as confidential any record which may be withheld and retained as confidential under subch. II of ch. 19, Stats., including, but not limited to, a record which may be withheld or which is privileged under any law or the rules of evidence, as attorney work product under the rules of civil procedure, as attorney–client privileged material under s. 905.03, Stats., as a medical record under ss. 146.81 to 146.84, Stats., or as privileged under s. 601.465, Stats.

~~(2)~~ **(3)** DEFINITION. In this section, "confidential claims information" means any plan document or information relating to a claim against a plan-insured health care provider in the possession of the commissioner, the board or an agent thereof, including claims records of ~~the fund and~~ the plan. ~~and claims paid reports submitted under s. 655.26, Stats.~~

~~(3)~~ **(4)** DISCLOSURE. Confidential claims information may be disclosed only as follows:

(a) To the medical examining board as provided under s. 655.26, Stats.

(b) As needed by the peer review council, consultants and the board under s. 655.275, Stats., and rules promulgated under that section.

(c) As provided under s. 804.01, Stats.

(d) To an individual, organization or agency required by law or designated by the commissioner or board to conduct a management or financial audit.

(e) With a written authorization from the plan-insured health care provider on whose behalf the claim was defended or paid. ~~Disclosure under this paragraph is limited to the number of judgments against and settlements entered into on behalf of the provider and the number and amounts of claims paid by the plan, the fund or both.~~

(f) To the risk manager for the fund, as needed to perform the duties specified in its contract. The risk manager may not disclose confidential claims information to any 3rd party, unless the board expressly authorizes the disclosure. The board may authorize disclosure of patient health care records subject to ss. 146.81 to 146.84, Stats., only as provided in those sections.

SECTION 3. Ins 17.28 (5) (c) is created to read:

Ins 17.28 (5)(c) *Late filing fee.* A late fee in the amount of $100.00 per certificate shall be paid to the fund by each insurer and self-insured provider who fails to file a certificate of insurance in accordance with the requirements of this subsection. An additional $100.00 late fee shall be paid per certificate for each additional week, or portion thereof, the certificate is not in compliance with this subsection.

SECTION 4. Ins 17.28 (6) is repealed and recreated to read:

Ins 17.28 (6) FEE SCHEDULE. The following fee schedule is in effect from July 1, 1999, to June 30, 2000:

(a) Except as provided in pars. (b) to (f) and sub. (6e), for a physician for whom this state is a principal place of practice:

Class 1	$2,531	Class 3	$10,504
Class 2	$4,809	Class 4	$15,186

(b) For a resident acting within the scope of a residency or fellowship program:

Class 1	$1,266	Class 3	$5,254
Class 2	$2,405	Class 4	$7,596

(c) For a resident practicing part-time outside the scope of a residency or fellowship program:

All classes	$1,519

(d) For a medical college of Wisconsin, inc., full-time faculty member:

Class 1	$1,012	Class 3	$4,200
Class 2	$1,923	Class 4	$6,072

(e) For a physician who practices fewer than 500 hours during the fiscal year, limited to office practice and nursing home and house calls, and who does not practice obstetrics or surgery or assist in surgical procedures: $632

(f) For a physician for whom this state is not a principal place of practice:

Class 1	$1,266	Class 3	$5,254
Class 2	$2,405	Class 4	$7,596

(g) For a nurse anesthetist for whom this state is a principal place of practice: $631

(h) For a nurse anesthetist for whom this state is not a principal place of practice: $315

(i) For a hospital:

1. Per occupied bed $155; plus

2. Per 100 outpatient visits during the last calendar year for which totals are available. $7.75

(j) For a nursing home, as described under s. 655.002 (1) (j), Stats., which is wholly owned and operated by a hospital and which has health care liability insurance separate from that of the hospital by which it is owned and operated:

Per occupied bed	$29

(k) For a partnership comprised of physicians or nurse anesthetists, organized for the primary purpose of providing the medical services of physicians or nurse anesthetists, all of the following fees:

1. a. If the total number of partners and employed physicians and nurse anesthetists is from

2 to 10	$88

b. If the total number of partners and employed physicians and nurse anesthetists is from

11 to 100	$881

c. If the total number of partners and employed physicians and nurse anesthetists

exceeds 100	$2,202

2. The following fee for each of the following employes employed by the partnership as of July 1, 1999:

Employed Health Care Persons	July 1, 1999 Fund Fee
Nurse Practitioners	$ 631
Advanced Nurse Practitioners	886
Nurse Midwives	5,568
Advanced Nurse Midwives	5,821
Advanced Practice Nurse Prescribers	886
Chiropractors	1,012
Dentists	506
Oral Surgeons	3,797
Podiatrists-Surgical	10,757

Optometrists	506
Physician Assistants	506

(L) For a corporation, including a service corporation, with more than one shareholder organized under ch. 180, Stats., for the primary purpose of providing the medical services of physicians or nurse anesthetists, all of the following fees:

1. a. If the total number of shareholders and employed physicians and nurse anesthetists is from 2 to 10 $88

b. If the total number of shareholders and employed physicians and nurse anesthetists is from 11 to 100 $881

c. If the total number of shareholders and employed physicians or nurse anesthetists exceeds 100 $2,202

2. The following for each of the following employes employed by the corporation as of July 1, 1999:

Employed Health Care Persons	July 1, 1999 Fund Fee
Nurse Practitioners	$ 631
Advanced Nurse Practitioners	886
Nurse Midwives	5,568
Advanced Nurse Midwives	5,821
Advanced Practice Nurse Prescribers	886
Chiropractors	1,012
Dentists	506
Oral Surgeons	3,797
Podiatrists-Surgical	10,757
Optometrists	506
Physician Assistants	506

(m) For a corporation organized under ch. 181, Stats., for the primary purpose of providing the medical services of physicians or nurse anesthetists, all of the following fees:

1. a. If the total number of employed physicians and nurse anesthetists is from 1 to 10 $88

b. If the total number of employed physicians and nurse anesthetists is from 11 to 100 $881

c. If the total number of employed physicians or nurse anesthetists exceeds 100 $2,202

2. The following for each of the following employes employed by the corporation as of July 1, 1999:

Employed Health Care Persons	July 1, 1999 Fund Fee
Nurse Practitioners	$ 631
Advanced Nurse Practitioners	886
Nurse Midwives	5,568
Advanced Nurse Midwives	5,821
Advanced Practice Nurse Prescribers	886
Chiropractors	1,012
Dentists	506
Oral Surgeons	3,797
Podiatrists-Surgical	10,757
Optometrists	506
Physician Assistants	506

(n) For an operational cooperative sickness care plan as described under s. 655.002 (1) (f), Stats., all of the following fees:

1. Per 100 outpatient visits during the last calendar year for which totals are available $0.19.

2. 2.5% of the total annual fees assessed against all of the employed physicians.

3. The following for each of the following employes employed by the operational cooperative sickness plan as of July 1, 1999:

Employed Health Care Persons	July 1, 1999 Fund Fee
Nurse Practitioners	$ 631
Advanced Nurse Practitioners	886
Nurse Midwives	5,586
Advanced Nurse Midwives	5,821
Advanced Practice Nurse Prescribers	886
Chiropractors	1,012
Dentists	506
Oral Surgeons	3,797
Podiatrists-Surgical	10,757
Optometrists	506
Physician Assistants	506

(o) For a freestanding ambulatory surgery center, as defined in s. HFS 120.03 (10):

Per 100 outpatient visits during the last calendar year for which totals are available $37

(p) For an entity affiliated with a hospital, the greater of $100 or whichever of the following applies:

1. 7% of the amount the entity pays as premium for its primary health care liability insurance, if it has occurrence coverage.

2. 10% of the amount the entity pays as premium for its primary health care liability insurance, if it has claims-made coverage.

SECTION 5. Ins 17.28 (6a) is amended to read:

Ins 17.28 (6a) FEES FOR OCI APPROVED SELF-INSURED HEALTH CARE PROVIDERS. The following fee schedule is in effect from July 1, ~~1997~~ 1999 to June 30, ~~1999~~ 2000 for OCI approved self-insured health care providers who elect, pursuant to s. 655.23 (4) (c) 2., Stats., to increase their per occurrence limit to ~~$600,000~~ $800,000 for each occurrence on or after July 1, ~~1997~~ 1999, provided such self-insured provider has filed an amended self-insured plan document reflecting the increased coverage levels with the office of the commissioner of insurance and with the patients compensation fund on or before August 15, ~~1997~~ 1999:

The fees set forth in sub. (6) multiplied by 1.073.

SECTION 6. EFFECTIVE DATE. This rule will take effect on the first day of the first month after publication, as provided in s. 227.22 (2) (intro), Stats.

Dated at Madison, Wisconsin, this__ day of _____, 1999.

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Connie L. O'Connell
Commissioner of Insurance